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Pangea Technologies, Inc. v. Internet Promotions, Inc. and Zions First National Bank: Reply Brief

Utah Supreme Court

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IN THE UTAH SUPREME COURT

PANGEA TECHNOLOGIES, INC.,)
d/b/a PANURGY CORPORATION,)

Plaintiff and Appellee,)

vs.)

INTERNET PROMOTIONS, INC.,)

Defendant,)

ZIONS FIRST NATIONAL BANK,)

Garnishee and Appellant.)

Supreme Court No. 20020445-SC
(District Court No. 010905106)

APPELLANT'S REPLY BRIEF

Appeal From a Decision and Judgment
of the Third District Court, Salt Lake County,
The Honorable Lee A. Dever

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UTAH SUPREME COURT

PAT BARTHOLOMEW
CLERK OF THE COURT

IN THE UTAH SUPREME COURT

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ARGUMENT

A. PANGEA’S REPLY TO GARNISHMENT INTERROGATORIES TRIGGERED THE TRIAL COURT’S OBLIGATION TO DEEM DENIED THE CHARGE THAT ZIONS WAS LIABLE ON THE GARNISHMENT AND TO HOLD A HEARING ON THE ISSUE.

In its Appellee Brief, Pangea argues that it is Zions’ “faulty assumption that Rule 64(D)(i) requires a hearing every time a judgment creditor files a Reply to Answers to Garnishee Interrogatories.” Appellee’s Brief at 4. Contrary to Pangea’s sweeping characterization of Zions’ position, Zions does not contend that a hearing is required every time a reply is filed. However, it *is* Zions position that a hearing is required whenever a reply attempts to impose liability upon the garnishee.

The language of the Rule states: “Such new matter in reply shall be taken as denied and the matter thus at issue shall be tried” Thus, the relevant inquiry would appear to be: “What is the ‘new matter’” to which the Rule refers? The Rule itself, when read in context, answers this question:

The plaintiff or defendant may . . . file and serve upon the garnishee and the other party to the principal action a reply to the whole or any part thereof and *may also allege any matters which would charge the garnishee with liability . . . Such new matter in reply shall be taken as denied and the matter thus at issue shall be tried* (Emphasis added.)

The words “such new matter” clearly refer to some prior reference in the Rule. A plain reading of the Rule reveals that this reference is to “any matter which would charge the garnishee with liability.” Thus, it is Zions position that the Rule requires that only those replies “which would charge the garnishee with liability . . . shall be taken as denied and . . . shall be tried.”

Zions' reading of the Rule is further supported when one matches up the phraseology employed by the Rule's drafters in these two sentences. Specifically, the first sentence contains the accusation, "charge the garnishee with liability," followed immediately by the logical response that such "charge" shall be "taken as denied" and "tried."

Thus, the "new matter" for which the Rule requires the trial court to deem denied and hold a hearing on is the very charge that Zions is liable on the garnishment.¹

Accordingly, the trial court erred when it granted judgment against Zions based on Pangea's reply which charge that Zions should be liable on the garnishment. Because the trial court should have deemed the charge denied and held a hearing on the issue of Zions liability as garnishee, the judgment should be reversed and the matter remanded for a hearing consistent with the requirements of Rule 64D(i).

B. PANGAEA ADMITS THAT THE TRIAL COURT'S AWARD OF ATTORNEY FEES WAS ERROR.

In its Reply Brief, Pangea admits that the trial court failed to articulate the basis for its award of attorney fees and that this issue should be remanded.

Notwithstanding that the trial court failed to state the basis for an award of attorney fees, Pangea argues that such fees would be proper under Utah Code Anno. §

¹ Pangea, on the other hand, argues that a hearing is only required when "there are new factual issues to be resolved," Appellee's Brief at 4, without stating what those "new factual issues" might be. As explained in the main body of this Brief, this is not what the Rule states.

78-27-56.² Pangea boldly states that the trial court would be justified in making a finding of bad faith based merely on Zions' amendment of its Answers to Garnishee Interrogatories without anything further. Zions suggests, to the contrary, that to make a finding of bad faith under § 78-27-56 based merely on an amendment to one's Interrogatory Answers would itself be reversible error. The trial court should, at a bare minimum, hear and consider evidence concerning why Zions' Interrogatory Answers were amended prior to making a finding that Zions engaged in bad faith. Furthermore, § 78-27-56 requires that (1) Zions' defense was "without merit" **and** (2) that it was asserted in bad faith. In this case, Zions never had the opportunity to assert *any* defense, much less assert one in bad faith.

Accordingly, the trial court's award of attorneys fees should be reversed.

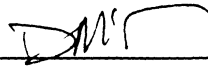
CONCLUSION

Because the District Court granted judgment to Plaintiff in violation of the procedural requirements of Rule 64D(i), such judgment should be set aside and the matter remanded to the District Court for further proceedings. In addition, the award of attorney

² This section of the Utah Code provides that attorney fees can be awarded to a prevailing party if the court determines that the action or defense was without merit and not brought or asserted in good faith.

fees should be reversed because there is no statutory or contractual basis for the same and because the District Court failed to designate the basis of such award.

DATED this 1st day of November 2002.

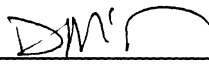


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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November 2002, I mailed a copy of the attached **APPELLANT'S REPLY BRIEF** by first class mail with sufficient postage prepaid, to the following:

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